

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Johannes Hubertus Wieringa

Application No.: 10/564,193

Confirmation No.: 7506

Filed: January 6, 2006

Art Unit: 1624

For: METHOD FOR THE PREPARATION OF
ENANTIOMERICALLY PURE MIRTAZAPINE

Examiner: Noble E. Jarrell

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Office Action dated January 7, 2008 having a shortened statutory one-month period for response which expires on February 7, 2008.

The Commissioner is hereby authorized to charge any fee or credit any excess to Deposit Account No. 50-4205.

The Examiner has indicated that the claimed subject matter is drawn to two distinct inventions and has required restriction to one of the following inventions, Group I, claims 1-9 drawn to a method of preparing mirtazapine from a compound of formula II, and Group II, claim 10, drawn to a method for the selection of an acid or acid/solvent system leading to the formation of mirtazapine from compound II.

Applicants provisionally elect with traverse to prosecute the claims of Group I, claims 1-9. In addition, with respect to the requirement to elect a single disclose species from the allegedly patentably distinct species, Applicants elect the species of acid, polyphosphoric acid in the

absence of solvent. The elected species, polyphosphoric acid, in the absence of solvent, is readable on claims 1, 2, 4 and 5.

Applicants expressly reserve the right to file a divisional application for claim 10 of non-elected Group II prior to issuance of this application. Further, Applicants expressly reserve the right to rejoin claim 10 of the non-elected Group II upon allowance of one or more of the claims of elected Group I.

This election is made with traverse because it is believed that no serious burden is imposed on the Patent Office's resources to examine the full scope of the present application if unrestricted. In this regard, MPEP §803, second paragraph, states:

"There must be a serious burden on the examiner if restriction is required."

It is respectfully submitted that since all of the claims require the identical compound of formula II, that a search and examination of Group II would substantially overlap with a search and examination of Group I and therefore would not impose a "serious burden" on the Examiner. In view of the above, the withdrawal of the Restriction Requirement is respectfully requested. Applicants retain the right to petition from the Restriction Requirement under 37 C.F.R. §1.144.

Early and favorable action is respectfully requested.

Dated: February 7, 2008

Respectfully submitted,

By

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